

S.B. CIVIL MISC. APPEAL No. 1338/2006
(Union of India & Ors. Vs. Smt. Uchhab Kanwar & Ors.)

DATED : 09.10.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Ravi Bhansali with
Mr.Dhanesh Saraswat, for the appellants
Mr.D.S.Udawat – Caveator.

On 16.01.2004 at 1.30 p.m., the deceased Sumer Singh, met with an accident on Ramgarh-Tanot road in front of rest house building near Ramgarh (Jaisalmer) and succumbed to the injuries sustained in the accident. The claimants, wife and children of Sumer Singh moved for compensation with the submissions that the accident leading to death of Sumer Singh was caused by a truck of Border Security Force bearing No. WB 23 – 6690 driven by non-applicant No. 1, Dhar Singh. For quantification of compensation the claimants asserted that the deceased was 40 years in age and was serving as Beldar in Indira Gandhi Nahar Pariyojana, Ramgarh earning salary income of Rs. 5412/- per month.

The claim application was contested by non-applicants denying the accident to have occurred for any fault of the driver of the aforesaid vehicle and submitted that the deceased brought his bicycle in an uncontrolled manner to the center of the road in violation of traffic rules and did not care despite indications by the driver who brought down the speed

of the vehicle to very slow but the deceased turned his bicycle towards the truck and despite the efforts of the driver hit against the truck and fell down. Such averments have been stated thrice over in the reply in paragraphs 3, 6 and 15. Averments in paragraph 6 of the reply read as under:-

“यह है कि प्रार्थना पत्र के पद संख्या 6 जिस प्रकार वर्णित किया गया है अस्वीकार है। क्योंकि मृतक सुमेरसिंह रामगढ़ बाजार की ओर से असंतुलित हालत में यातायात नियमों की अवहेलना करते हुए सड़क के मध्य में व गलत दिशा में साईकिल को चलाते हुए टी वी टावर रामगढ़ की ओर आ रहा था। आरक्षक/चालक धार सिंह द्वारा बहुत ही होशियारी से वाहन को चलाने तथा काफी हार्न बजाने के उपरान्त भी साईकिल सवार अपनी साईड में नहीं आया व साईकिल को बीचों बीच व गलत दिशा में चलाते रहा। आरक्षक/चालक धारसिंह गाड़ी को सही दिशा में तथा बिल्कुल मन्द गति पर करने के बावजूद भी साईकिल सवार सुमेर सिंह गाड़ी से भिड़ गया तथा नीचे गिर गया। आरक्षक /चालक धार सिंह एवं अन्य कार्मिकों ने एक जीप द्वारा उसे तुरन्त राजकीय सामुदायिक स्वास्थ्य केन्द्र रामगढ़ पहुँचाया और उसका इलाज शुरू करवाया। परन्तु इलाज के दौरान सुमेर सिंह की मृत्यु हो गई। यह दुर्घटना मृतक सुमेरसिंह द्वारा यातायात नियमों का उल्लंघन करते हुए असन्तुलित व अव्यवस्थित रूप से साईकिल चलाने के कारण हुई।”

After framing of the issues and taking the evidence produced by the parties, the Motor Accidents Claims Tribunal, Balotra by its impugned award dated 20.01.2006 has held the non-applicants liable for compensation with the finding that the accident occurred due to rash and negligent driving of the truck. The Tribunal has found the deceased Sumer Singh earning Rs.5,358/- per month and looking to his age of 40 years and his being in settled employment has provided for the

prospects of future increments taking his average salary at Rs, 7,500/- per month, leading to the multiplicand of Rs. 90,000/- per annum; and after deducting one-third on his personal expenditure has estimated loss of contribution for the claimants at Rs. 60,000/- per annum; and looking to the age of his wife at 35 years and of the five children between 13 to 4 years has applied a multiplier of 14 to assess pecuniary loss at Rs. 8,40,000/-; has allowed Rs. 2,000/- towards funeral expenses; Rs. 8,000/- to the wife for loss of consortium and Rs. 3,000/- to each of the children for loss of love affection and guidance of their father and , therefore, has made an award in the sum of Rs. 8,65,000/- and has allowed interest @ 6% per annum.

The appellants, owners and driver of the offending vehicle, seek to challenge the award aforesaid by way of the present appeal with the submissions that the accident occurred due to the negligence of the deceased himself; that the truck was very slow and the driver took all the precautions; that the Tribunal has erred in relying upon the testimony of alleged eye-witnesses AW-2, Narpat Singh and AW-3, Jabar Singh who are created witnesses; that the case of the appellants has been amply established by the testimony of vehicle driver NAW-1, Dhar Singh and the Tribunal has erroneously discarded his statement; that the Tribunal has

erred in placing reliance on the site inspection memo Ex.4 prepared by the police without considering that such report is tentative by its very nature and prepared after the incident and cannot be taken decisive on the issue of negligence; that the award on its quantification remains too excessive and exorbitant where the Tribunal has assessed higher multiplicand and applied higher multiplier.

Having heard learned counsel for the appellants and having scanned through the entire record, this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

So far the liability towards accident is concerned, it has amply been established on record that the accident was caused by taking the truck on the wrong side of the road and hitting the deceased, a hapless cyclist. Total negligence on the part of the truck driver has been clearly established by the testimony of the aforesaid two eyewitnesses and there is nothing in their cross-examination to discredit or disbelieve them. On the other hand, falsity of the case of the non-applicants is amply demonstrated by stark contradictions in their pleading and evidence. As noticed above, the non-applicants suggested in their reply that the deceased himself took his bicycle towards the truck; that the truck was brought down to minimal speed and the deceased himself hit against

the truck. The truck driver Dhar Singh, on the contrary, has deposed that he brought down the vehicle to halt and that the cyclist fell down on road near his truck and by such fall he sustained head injury.

In the words of the said driver NAW-1,-

“वह साईकिल को ऐसे चला रहा था जैसे वो नशे में हो। तब मैंने मेरी गाडी को साईड में खड़ा कर दिया। तब वह व्यक्ति साईकिल को चलाते हुये मेरी ट्रक के पास में आकर गिर गया । गिरने से सडक पर गिरने से उसके सिर में चोट लगी।”

What to say of the case of the appellants being proved by the testimony of NAW-1 Dhar Singh, this witness has not only contradicted the reply averments but has clearly demonstrated that he has no respect for the oath he was deposing under.

The appellants are not correct in their assertion that the site inspection memo prepared by the police has no evidentiary value or that the same cannot be taken into account for the purpose of considering the situation at the site of accident. The memo prepared by the investigating agency in discharge of its official duties cannot be discarded as a waste paper particularly when examining the circumstances surrounding the scene of accident and the marks available at the site after the incident. It is clearly borne out from the site

inspection memo Ex. 4 that the truck in question while coming from Tanot towards Ramgarh was attempted to be put on breaks from point 'B' and yet covered a distance of about 83 feet while getting shifted to its right-hand side and then hit the cyclist at point 'A' then further covered a distance of about 49 feet before coming to halt at the extreme right-hand side of the road; and the cyclist was either dragged along or was swept away to a distance of about 49 feet from point 'A' to the other side of the road. It is apparent that the truck was in a brisk speed and was driven in uncontrolled manner that hit the cyclist on the wrong side of the road. The suggestion that the vehicle was brought down to minimal speed as stated in the reply or that it was brought to halt as stated by the driver Dhar Singh are clearly falsified by the site inspection memo.

That the truck driver is totally untruthful is further clear from the post mortem report Ex. 5 that shows that the victim Sumer Singh was brought dead to the community health center at 1.45 p.m. and the post mortem conducted at 3.30 p.m. reports about extensive injuries all over the body including fracture of nasal bone, maxilla and mandible to abrasion at left elbow to fracture of right femur bone to abrasions on left foot. It is rather preposterous to suggest that such extensive injuries in the entire length of the body were sustained on the cyclist merely falling down on the road

without being forcefully hit upon. Cumulative effect of the evidence available on record is clearly and only to the effect that the cyclist was hit by the truck on the wrong side of the road causing him fatal injuries. Learned Judge of the Tribunal has rightly analysed the evidence and held the accident and death of the victim being the result of total negligence of the truck driver.

Challenge to the quantum of compensation is equally baseless. The deceased was 40 years in age and was in settled employment as Beldar earning basic salary and D.A. at Rs.5,358/- per month . The Tribunal has provided for rather smaller component towards future prospects taking average salary at Rs. 7,500/- per month only and then has applied a multiplier of 14 only after deducting one-third for personal expenses of the deceased. On every score the award falls on lower side. If about 1.5 times the last income would have been provided towards future prospects, average income could have been taken around Rs. 8,000/- per month. Then, the deceased had a comparatively larger family of seven persons including himself to support and in view of the family set up deduction on personal expenditure less than one-third could have been considered. Multiplier of 14 is also on the lower side if not entirely inadequate. The Tribunal has further been restrictive in allowing non-pecuniary loss at Rs. 8,000/- to the

wife and Rs. 3,000/- to each of the children. The ultimate award made by the Tribunal in the sum of Rs. 8,65,000/- with interest @ 6% per annum cannot be said to be excessive or exorbitant so as to warrant interference in appeal.

Thus the present appeal remains totally meritless and deserves to be dismissed.

As a result of the aforesaid, this appeal fails and is dismissed summarily.

(DINESH MAHESHWARI),J.

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